

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 1:15-cr-070
Civil Case No. 1:18-cv-00516

- vs -

District Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

ALLEN MICKLE,

Defendant. :

REPORT AND RECOMMENDATION

This case was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B), Fed.R.Civ.P. 72(b), and Amended General Order 22-05 for consideration of Defendant's Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 232). Upon initial consideration, the Magistrate Judge found the Motion was not signed under penalty of perjury as required by the Rules Governing § 2255 Proceedings and ordered Defendant to file an amended motion to vacate which was properly signed (ECF No. 279).

The referenced Order was returned by the Postal Service which reported it was unable to deliver it. Upon inquiry, the Clerk found that Defendant had been released on July 6, 2022.

Litigants are obliged to keep the Court aware of their current address, but Defendant has not done so, even though his address has been changed for almost two years. It is therefore respectfully recommended that the Motion to Vacate be dismissed without prejudice for want of

prosecution. Because reasonable jurists would not disagree with this conclusion, it is also recommended that Petitioner be denied a certificate of appealability and that the Court certify to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

April 16, 2024.

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #

s/ *Michael R. Merz*
United States Magistrate Judge